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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,885	02/16/2001	Charles Hall Schleyer	JJA-0101	5210
27810	7590	10/28/2003	EXAMINER	
EXXONMOBIL RESEARCH AND ENGINEERING COMPANY P.O. BOX 900 1545 ROUTE 22 EAST ANNANDALE, NJ 08801-0900			MEDLEY, MARGARET B	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/784,885	Applicant(s) SCHLEYER, CHARLES HALL	
	Examiner Margaret B. Medley	Art Unit 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The instant application was filed on February 16, 2001 with pending claims 1-15 as a CIP of parent U.S. serial NO. 09/226,409 filed in January 6, 1999, now abandon. The application has been filed with 3 sheeting of informal drawings.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "which also possesses at least one of the following additional properties" in claims 2, 4 and 9 is confusing because the clarity of the fuel properties cannot be determined. It is suggested that the language of claim 3 may be used "which possesses at least one of the following" if applicant intended to further limit the properties and to not add the properties as an additional property. Clarification is required.

Claims 2 and 4 are further confusing in that when the "S," "aromatics" and "olefins" components are selected, then claims 2 and 4 create problems of duplication.

Claims 6 (and its dependent claims) are confusing and indefinite for the RVP, psi \leq 7.0 and the RVP, psi 6.6-7.0 appearing in the sample claims.

Claim 8 is indefinite for the "from 215° F to 218° F" that appears to be in conflict with "> 215° F" "lower range for the T₅₀ properties.

Claims 6 and 9-10 are indefinite for the " $T_{90}^{\circ} \text{F}$ 315-330" in claims 9-10 that appears to be in conflict with claim 6 " $T_{90}^{\circ} \text{F}$ <330".

Claims 1 and 4-5 are indefinite for the Octane, $(R + M)/2$ 86-87 in claims 4-5 that appears to be in conflict with claim 1 Octane, $(R + M)/2 \geq 87$.

Claims 1 (and its dependent claims) and 6 (and its dependent claims) are indefinite for lines 1-2 phrase "an unleaded EPA complaint gasoline pump fuel which provides total emissions no higher than those allowed under CARB regulations for Clean Burning Gasoline's (CBG), Title 13 California code of Regulations, section 2260 et seq." because the examiner is not able to determine the metes and bounds of the claims with respect to the gasoline and with respect to the disclosed Regulations. During Ex parte prosecution the limitations from the specification must not be read into the claims. *Am Inc. v. Kee-Vet Labs Inc.* 12 USPQ 2d 1474, 1476 (Fed. Cir. 1989); *DuPont v. Phillips Petroleum Co.* 7 USPQ 2d 1129 (Fed. Cir. 1988); *In re Yamato* 222 USPQ 93; *Case v. CPC International Inc.* 221 USPQ 196; *Environmental Designs Ltd. v. Union Oil Co., of CA* 218 USPQ 865; *Akiesbolget Karlstads McKanishka Werksted v. ITC* 217 USPQ 865; *In re Wilson* 149 USPQ 523; *In re Winkaus* 188 USPQ 129 (CCPA 1975); *Graver Tank v. Lindle Air Products Co.* 80 USPQ 451 (Supr. Ct.)

It is suggested that applicants should insert the properties that should be met for the gasoline fuels since the laws change or varies from year to year.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Admitted Prior Art.

Applicant makes admission on record in the instant application at page 5 first paragraph that the Jessup et al Patents 5,837,126; 5,653,866; 5,593,567 and 5,288,393 teach a number of gasoline compositions. Patentees further teach that certain properties of gasoline provide the following characteristics: 1.) decreases in the 50% D-86 Distillation Point e.g. 170-215°F caused decreases in CO and hydrocarbon emissions; 2) decreases in the Olefin Content e.g. 0-15 vol.% caused reductions in No_x emissions; 3) decreases in the 10% D-86 Distillation Point e. g. 122-140° F caused reduction in No_x emissions; 4) decreases in Reid Vapor Pressure caused reductions in No_x emissions e.g. 6.5 to 8 psi; 5) increases in the aromatic content e.g. 35-40 col. % reduces hydrocarbon emissions; 6) increase in the paraffin content e.g. 40-90 vol.% decrease the CO emissions; 7) decreases in the 90% D-86 Distillation Point e.g. 271-416° F reduces CO emissions; 8) increases in the research Octane Number e.g. 87-93 reduces hydrocarbon emissions, note each references in the entirety especially '393 at column 2, lines 1-50, column 6 lines 5-63, column 7 lines 1-54, Table 5 of columns 11-12 and column 13, line 46 to column 15 lines 1-46.

Applicant further makes admission on record at pages 2-4 that the composition of motor gasoline is restricted by federal and, in some cases, by State regulations and that the California Air resources Board (CARB) has established a legal references framework for the sale of motor gasoline in California to reduce air pollution. It is the Examiner's position that to decrease the 50% D-86 distillation point, the 10% D-86 distillation point, the olefin content, the RSVP and the 90% D-86 distillation point; and increase the paraffin content, the aromatic content and the

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octane number of the gasoline composition of the primary references would be obvious in view of the framework of (CARB) the federal and state regulations because the gasoline fuels would inherently meet the EPA required standards for the year 2000 and future dates.

Applicants' own admissions are prior art. Constant V. Advances Micro Devices Inc. 7 USPQ 2d 1057 (Fed Cir. 1988); Tyler Refrigeration v. Kysor Industrial Corp. 227 USPQ 485 (Fed. Cir. 1985); In re Nomiya 184 USPQ 607 (CCPA 1975).

Claim 10 appears to contain allowable subject matter and is objected to and would have to overcome the 112 rejections of record to be allowed.

The references cited but not applied teach gasoline compositions of the same nature as claimed by Applicant.

The prior art from the parent application 09/226,409 have been reviewed and considered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is 703-308-2518. The examiner can normally be reached on Monday-Friday from 7:30 am to 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

M. Medley/lap
October 20, 2003


MARGARET MEDLEY
PRIMARY EXAMINER